THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 28111 of 2005

Dated: 01.08.2006

Between:

Abubakar, E.No. 62926, Ex-Driver, S/o Khursheed Miya,
H.No. 1-4-481, Birban Street, Bholakpur, Musheerabad,
Hyderabad.

..... PETITIONER

AND

The Depot Manager, APSRTC, Musheerabad Depot, Hyderabad
and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 28111 of 2005

Order:

This writ petition is filed seeking a Mandamus declaring the award dated 08.03.2002 passed by the Labour Court-I, Hyderabad, in I.D. No. 102 of 1999, in so far as imposing the punishment of postponement of two annual increments with cumulative effect, and denying the back wages and attendant benefits, as illegal and arbitrary.

The petitioner is working as a Driver in the 1st respondent-A.P.S.R.T.C. He was charge sheeted on 26.03.1993 alleging that he unauthorisedly absent from duties from 07.01.1993. The petitioner failed to submit his explanation to the said charges, and also did not attend before the Enquiry Officer, in spite of issuing several notices. Therefore, the Enquiry Officer, having conducted an *ex parte* enquiry, held the charges proved. Based on the findings of the enquiry report, a notice calling upon the petitioner to show cause as to why he shall not be removed from service was issued. The petitioner even did not reply to the said show cause notice. Therefore, the 1st respondent, namely Depot Manager, issued the proceedings dated 24.08.1993 imposing the punishment of removal from service. Against the order of removal, the petitioner raised an industrial dispute in I.D. No. 102 of 1999 and the Labour Court, vide the award impugned in the writ petition, altered the punishment of removal from service into postponement of two annual increments with cumulative effect, denial of back wages and attendant benefits. Assailing the award of the Labour Court in so far as imposing the punishment of two annual increments with cumulative effect and not granting back wages and attendant benefits, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner, the learned Standing Counsel for the 1st respondent-APSRTC, the learned Government Pleader for Labour and perused the award of the Labour Court.

The learned counsel for the petitioner submitted that the Labour Court failed to see that the petitioner was absent due to his sickness and that no charge sheet nor show cause notice was served on him and the entire disciplinary proceedings have been initiated behind his back. He further submits that when the Labour Court came to a conclusion that the petitioner is entitled for reinstatement, automatically he is eligible for the back wages as well as the continuity of service and that the award of the Labour Court in so far as imposing punishment of postponement of two annual increments with cumulative effect and denying the back wages and attendant benefits is disproportionate to the proved misconduct. He, thus, prayed to set aside the award passed by the Labour Court in so far

as imposing punishment of postponement of two annual increments with cumulative effect and denying the back wages and attendant benefits and allow the writ petition.

Learned Standing Counsel for the 1st respondent-Corporation contended that the punishment imposed against the petitioner is not disproportionate to the proved misconduct. Given the misconduct, alleged against the petitioner, which stood proved, the petitioner has to be dismissed from service, but the disciplinary authority has imposed a lesser punishment of removal from service, and the Labour Court, on re-appreciation of the entire material on record and holding that the punishment of removal of the petitioner from service is not in proportion to the charges proved, altered the punishment to that of postponement of two annual increments with cumulative effect, denial of back wages and attendant benefits, and no interference is called for therewith.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India to issue a writ of certiorari are limited to – firstly to correct errors of jurisdiction when the inferior Court or Tribunal acts without jurisdiction or in excess or fails to exercise it, secondly correct errors of law apparent on the face of the record, and thirdly correct and interfere with the findings that are based on suspicion, conjectures or surmises or no reason. The law is well settled that this Court does not act as an appellate authority and reappraise the evidence while exercising certiorari jurisdiction. It is within these parameters, the impugned award of the Labour Court, is to be examined.

The petitioner, as can be seen from the award, did not allege any procedural irregularity in the conduct of the enquiry. The petitioner was charge sheeted on 26.03.1993 alleging that he unauthorisedly absent from duties from 07.01.1993 onwards. Since the petitioner neither submitted his explanation to the charge sheet nor attended before the enquiry officer, in spite of issuing several notices, an *ex parte* enquiry was conducted and the Enquiry Officer, on consideration of the entire material on record, held that the charges leveled against the petitioner were proved. The disciplinary authority, considering the nature of the proved charges, imposed punishment of removal from service. The Labour Court, on re-appreciation of the entire material on record, though found that the charges are proved against the petitioner, while observing that the punishment of removal of the petitioner from service is disproportionate to the charges proved, altered the punishment of removal from service to that of postponement of two annual increments with cumulative effect, denial of back wages and attendant benefits. Had the Labour Court held that the charges leveled against the petitioner are not proved, then the petitioner would have been justified in

contending that he should be awarded backwages and attendant benefits, but that is not the case. The Labour Court, having held that the charges leveled against the petitioner are proved, has taken a lenient view and altered the punishment. Merely because the petitioner was directed to be reinstated into service by altering the punishment, it does not mean that he is entitled to backwages.

Backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (see **U.P. State Brassware Corpn.Ltd. v. Uday Narain Pandey**[1]). It is not a case where the punishment of removal passed by the disciplinary authority against the petitioner was set aside by the Labour Court on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority or the Labour Court had passed orders in violation of the principles of natural justice. But the Labour Court has altered the order of removal passed by the disciplinary authority to that of postponement of two annual increments with cumulative effect, denial of back wages and attendant benefits on the ground that the punishment imposed was disproportionate to the proved misconduct.

In **Karnataka Bank Ltd. V. A.L. Mohan Rao**[2], the apex Court held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority was altered by the Labour Court to that of postponement of two annual increments with cumulative effect, it does not mean that the petitioner is entitled to be granted backwages, and more so because he remained out of employment during the period between the date of his removal from service and till he was reinstated by virtue of the impugned order.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

_____

N.V. RAMANA, J.

Date: 01.08.2006
Nsr

[1] (2006) 1 SCC 479

[2] (2006) 1 SCC 63